

Canada's Asylum System: A Threat to American Security?

By James Bissett

Canada has the most generous asylum system of any country in the world. Any individual who arrives in Canada or who reaches Canadian territorial waters has the right under law to submit a claim for protection under the UN Convention. The lack of an effective pre-screening mechanism enables almost 100 percent of claimants to receive a formal hearing with free legal advice. No other country has a higher approval rate.¹ Moreover, once on Canadian soil few asylum seekers are sent home even when found not to be genuine refugees.

Canada's asylum laws would not normally be of concern to the United States, but after the terrorist attacks of September 11 this has changed. Although none of the terrorists came from Canada, the existence of terrorist cells there has been well documented. The head of the Canadian Security Intelligence Service (CSIS) reported to the Canadian Parliament in June 1998 that there were more than 50 terrorist organizations operating in the country.

In December 1999, Ahmed Ressay, an asylum seeker from Algeria who hadn't bothered to show up for his refugee hearing, was apprehended attempting to enter the United States from Canada with a trunk load of explosives in his car. He planned to blow up Los Angeles International airport. Ressay was a member of a Montreal cell of the Algerian Armed Islamic Group that has strong ties to Osama bin Laden's al Qaeda network. U.S. Attorney General John Ashcroft has identified two former Montreal residents on the list of "most wanted" al Qaeda militants. In June 2000, the CSIS annual report expressed the view that North America was a target for mass-casualty terrorist attacks. The warning signs were there before September 11, but few took them seriously. The threat continues today.

Canada has introduced some far-reaching security legislation since the attacks in the United States, but the weakest link — Canada's asylum system — has not been addressed. Over time, in the face of widespread abuse, the United States and Western European countries have tightened their asylum procedures. Canada, however, has moved in the opposite direction. In No-

vember — two months after the terrorist attacks — the Canadian Parliament passed new legislation that makes it easier for asylum seekers to apply for refugee status and makes it more difficult for those found not to be genuine refugees to be sent home. Consequently, the security of both countries remains vulnerable to a Canadian asylum system that seems designed to openly welcome potential terrorists.

This *Backgrounder* examines how Canada's asylum system has evolved since the end of the Second World War and identifies some of the major influences that have given rise to the system that currently exists.

Origins of the System

At its fourth session in 1949, the General Assembly of the United Nations agreed in principle to the appointment of a High Commissioner for Refugees and the establishment of an office of the UN High Commissioner (UNHCR) to become effective on January 1, 1951.² The Assembly also decided to organize a convention to regulate the legal status of refugees.

Canada played a major role in the drafting of the subsequent convention. The Economic and Social Council of the United Nations set up a nine-person ad hoc committee chaired by the Canadian delegate. The committee's draft convention was debated at a special conference of interested governments, meeting in Geneva July 2-25, 1951. On July 28 of that year, the convention was adopted and was titled the "United Nations Convention Relating to the Status of Refugees."

Despite its key role in drafting the Convention, Canada did not sign it until 18 years later. The primary reason for this lack of interest was that Canada did not envision itself as a country of first asylum for refugees. It was thought highly unlikely that refugees fleeing persecution would find a direct route to Canada. Therefore, the Government believed its role in helping to resolve refugee problems should be as a country of resettlement. Canada would share the refugee burden with the countries of first asylum by accepting thousands of refugees for resettlement.³

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Since Canada was also actively seeking immigrants to strengthen its labour force, the selection of refugees fulfilled a dual purpose. Refugees helped Canada meet its humanitarian obligations as a member of the United Nations, and at the same time, helped achieve the country's immigration objectives. The refugees selected were for the most part individuals who could successfully establish themselves upon arrival in Canada. Ironically, Canada's contribution to the resolution of refugee problems through its resettlement programmes was accomplished even though the word "refugee" did not appear in Canadian legislation until the 1976 Immigration Act. Therefore, from the end of the Second World War until the present, the guiding principle of Canada's refugee policy has been that refugees should be selected essentially on the same basis as ordinary migrants.⁴

The 1976 Act did incorporate the UN Convention definition of "refugee." The legislation also prescribed a process for dealing with people who arrived in Canada asking for asylum. This latter provision was necessary because in the years leading up to the new Act, small numbers of people had begun to ask for asylum after entering the country. The asylum process set out in the legislation was cumbersome and time consuming. It was designed to handle a maximum capacity of about 500 cases per year. However, by the time the new Act came into force in 1978, increasing numbers of people coming to Canada were asking for protection under the UN Convention. In 1980, 1,600 asylum claims were filed. The system designed two years earlier was already under stress.

Most of the people making asylum claims were coming to Canada as visitors from countries whose citizens did not require visitor visas to enter: India, Portugal, Trinidad and Tobago, Turkey, and Brazil. When the validity of their visit expired, they submitted an asylum claim. The word was out that anyone had the right to make a claim for asylum and that the process was lengthy. Unscrupulous travel agents, immigration lawyers, and consultants were quick to exploit this new discovery. The process of asylum determination was so interminable that by the time a negative decision was made, the individual often would have married a Canadian, found a job, or even purchased property. Having established strong ties to Canada, it was difficult to justify removal.

To stem the flow, the Government was obliged, as a first step, to impose visitor visa requirements on all offending countries.⁵ This was done over a period of time despite the adverse effect on Canada's bilateral relations with the countries concerned. It was also apparent that a new system for dealing with asylum claims was urgently needed. A new system, however, required new legislation and there was no easy consensus on what a new asylum system should entail. The Government turned to outside experts for help.

Two Contrasting Reports: The Ratushny and Plaut Studies

Between 1984 and 1985, two major studies of the issue were undertaken. They were important because they reflected two fundamentally divergent views about how asylum systems should operate. The two differing views marked the ensuing debate in Parliament and continue to be at the heart of any discussion of asylum systems.

The first view, as expressed by law professor Ed Ratushny, argued for a tough approach to the adjudication of asylum claims. He believed the essential element of any system was to restrict access to the Refugee Board and to ensure frivolous and unfounded claims were disposed of rapidly at the front end. The professor concluded his study, "A New Refugee-Determination Process for Canada," by stating the objective of Canada's asylum policy should be to "limit direct access to Canada as a place of refuge in order to ensure that asylum is made available to the greatest possible number of those in most need of protection." Professor Ratushny's report received little attention by the Government. Before it was even submitted, Immigration Minister John Roberts announced a similar study to be conducted by Rabbi Gunther Plaut entitled "Refugee Determination in Canada". Rabbi Plaut, a former refugee from Nazi Germany, was a prominent human rights activist and a leading advocate for refugees.

In contrast to Professor Ratushny, Rabbi Plaut's report stressed the necessity of allowing unrestricted access to the asylum system. He believed asylum systems that restricted access were following a minimalist approach to their obligations under the UN Convention. Nor did he believe that the number of asylum applicants should be an issue. As he said in his report, "... each person only has one life to live. The opportunity to do so in decency and dignity is not determined by quantitative comparisons but rather by the quality of the response with which Canada...meets the refugee needs.... There is a human dimension to saying a ready 'yes' to a refugee."

Rabbi Plaut's report was tabled in the Canadian Parliament in the spring of 1985. It was referred for study to the Standing Committee on Labour, Employment, and Immigration and was to form the basis of new asylum legislation. There seemed to be general consensus about the direction the new legislation should take. All agreed that the establishment of a new and independent Refugee Board was essential and that people claiming asylum should be entitled to an oral hearing.⁶ All also agreed that reform of the legislation was urgently needed. The numbers of asylum seekers arriving in Canada was on the increase. In 1984 close to 10,000 asylum claims had been registered, and the backlog of people waiting for a decision on their claim had exceeded the 20,000 mark.

In May 1986 Immigration Minister of State Walter MacLean announced the Government's proposals for reform in the House of Commons, including the establishment of an independent Immigration and Refugee Board (IRB). Asylum applicants would appear before a two-member panel. The hearing would be non-adversarial, and both board members would have to agree for the claim to be refused. If only one member believed the claim deserved asylum status, the claim was nevertheless to be accepted. Should the Board refuse a claim, the members were required to give written reasons for the refusal. A positive decision, however, did not require a written ex-

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planation. Refused cases were entitled to a second level review of the transcript by another IRB member, and the claimant could seek leave to appeal to the Federal Court.

The proposal included modest access controls. Access to the asylum system would be denied to those already recognized as refugees in another country; those who had not submitted a claim within six months of arrival in Canada; those who had submitted previously unsuccessful claims and persons under order of removal. The Government was confident these proposals would meet with general approval by the advocacy groups, the other non-governmental organizations and church groups interested in asylum issues. The Government was wrong.

When the Minister met with these groups to outline the proposals he was greeted with a storm of protest and a vote of non-confidence. He was not allowed to finish his speech. The Minister walked out of the meeting, but the battle lines had been drawn between the Government and the special interest organizations concerned about the protection of refugees. The criticism by the advocacy groups centered on their demand that there be universal access to the Refugee Board. Anyone wishing to make an asylum claim must be allowed to do so. They also demanded that if the claim was refused at the first level then a *de novo* hearing must be granted at the second level.

The expectation for early reform of the asylum system was premature. In fact it was to be almost four years after Rabbi Plaut's report had been tabled before new refugee legislation was enacted in January 1989. There was no compromise by the organizations opposing the Government's new asylum proposals. These groups, often led by prominent refugee lawyers and left-wing activists, wielded a powerful influence on Government. These were

the organizations that maintained a watching brief on refugee legislation. They favoured large-scale immigration and an open policy towards refugees. They had easy access to the media. At public consultation hearings held by the Government to discuss new legislation, the lawyers, NGOs, and the church representatives were always present and vocal. They were highly organized and experienced lobbyists. As such they wielded much more influence than their numbers or views warranted.

Furthermore, the Canadian advocacy groups tended to be fervently anti-American. In the late 1960s and 1970s they had opposed the war in Vietnam and encouraged draft dodgers and military deserters to come to Canada. In the 1980s they opposed United States policy in Central America and actively encouraged asylum seekers from Guatemala and El Salvador, who were illegally in the United States, to come to Canada and ask for asylum. Any tightening up of the Canadian asylum policy would impact unfavourably on this movement. This explains in large part the intensity of their opposition to the Government's proposed asylum legislation. The influence of such groups in Canada has not abated. The pressure they have been able to generate on the Government is one of the primary reasons why the Canadian asylum system has remained resistant to reform.

Struggle Continues in Wake of 1989 Refugee Legislation

In November of 1986, the United States declared an amnesty for people without legal status who had entered the United States before 1982. Those who had entered illegally after 1982 were faced with the threat of deportation. Many of the latter were Central Americans and, with the urging of Canadian advocacy organizations, hundreds of them began to arrive at the Canadian border seeking asylum. In December 1986 in one three-day period more than 1,000 asylum seekers crossed the U.S.-Canadian border to claim political asylum. It became clear that Canada was losing control of its borders.

All attempts by the Government to reach some sort of compromise with the special interest groups met with failure. Finally, with no hope for reconciliation and faced with increasing numbers of asylum seekers, the Government was forced to act. In May 1987 the long-overdue Refugee Bill was tabled in Parliament. However, the Bill now included a much tougher provision — one that had been rejected previously as too controversial. This was the "safe third country" concept. This provision denied access to the asylum system to anyone coming to Canada from a "safe country" — that is from a country that was a signatory to the 1951 UN Convention, was democratic, followed the rule of law, and had a good human rights record.

The rationale of the “safe third country” provision was that people genuinely fleeing persecution would normally ask for asylum in the country of their first destination. Those who did not do this, but instead preferred to travel on to another country of their own choosing, were obviously not seeking protection from persecution but rather were shopping around for a desirable country in which to settle. Their objective was not protection but immigration.

It had become evident to immigration officials that without the “safe third country” provision the new refugee legislation could not hope to stem the rising tide of asylum seekers — most of whom were arriving from Western European countries and the United States. In addition, it became clear that Professor Ratushny had been right — no quasi-judicial system could handle a large volume of applications. Any asylum system had to restrict access to function adequately.

“Safe third country” was to be the instrument to achieve this. The seemingly unending numbers of asylum seekers would overpower the model designed by Rabbi Plaut, which was weighted heavily in favour of the asylum claimant. Moreover it had been decided that because of the Canadian Charter of Rights and Freedoms all asylum claimants were entitled to free legal assistance when appearing before the Board.

As expected, the legislation did not have an easy passage through the Parliament. Opposition parties supported by the special interest groups and the immigration-lawyer lobby criticized the legislation and demanded amendments. The “safe third country” concept was described as a denial of natural justice and a violation of basic human rights. Outside of Parliament a highly organized campaign against the Bill was organized.

Meanwhile, following a brief decline in the wake of the legislation, the number of asylum seekers continued to increase, and backlogs continued to grow. The Government was forced to act. The arrival of a ship in July 1987 that ran aground in Nova Scotia with 174 Sikhs aboard (who were being smuggled into Canada) caused a public outcry for more effective control. Nevertheless, resistance to the legislation remained strong and the debate in Parliament carried on through 1987 and into the summer of 1988. Finally, with some minor amendments, the legislation received approval in July 1988 to come into effect on January 1, 1989. But this was not the end of the struggle.

Even after the legislation was approved, the advocacy groups continued to campaign against the legislation. Their criticism was focused on the “safe third country” provision. This key provision had also become a source of contention within the Cabinet as it had to decide the list of countries to be declared “safe,” and there was a difference of opinion about whether the United States was a safe country for Salvadorans and Guatemalans. The Min-

ister of Immigration did not believe the United States was safe for people from these two countries, yet the Minister of Foreign Affairs could not accept a list of “safe countries” that did not include the United States.

This dilemma was not resolved until three days before the new legislation was to come into effect. On December 28, 1988, the Minister of Immigration issued a short press release about the new refugee law and declared: “...at the present time I am prepared to proceed with no country on the safe third country list.” In one stroke the new asylum legislation had been emasculated. The Government had lost its nerve.

Without the safe country provision the new legislation would prove to be useless in curbing the flow of asylum seekers. The inability to screen out claimants who could have sought protection elsewhere meant that numbers would soon overwhelm the new Refugee Board. Access controls were rejected — everyone who arrived and claimed asylum status would be entitled to a hearing, due process of law, and Charter of Rights protection. Rabbi Plaut and the advocacy groups had triumphed over Professor Ratushny and those favouring reform of the system.

An Asylum Travesty

The generous system patterned after Rabbi Plaut’s model and unprotected by the safe country provision was an open invitation for abuse. Adding to the problem was the newly established Immigration and Refugee Board consisting of approximately 180 politically appointed members. The great majority of these members were chosen from the ranks of immigration lawyers, advocacy groups, and multicultural organizations. It appeared as though the Government was now determined to reward the very groups that had fought so hard against passage of the refugee bill by placing the “foxes” in charge of the asylum “chicken coop.”

As expected, the acceptance rate of the new IRB soared, and soon Canada had the highest approval percentage of all the asylum countries. A high acceptance rate, combined with generous welfare and social assistance programmes, free legal aid, the right to work immediately upon arrival, freedom of mobility, and the privilege of applying for Canadian citizenship only three years after becoming a legal resident, attracted more and more asylum claimants.

Since the legislation was proclaimed in 1989, over 350,000 asylum seekers have arrived in Canada, and the numbers are on the increase. In 2000, about 38,000 arrived and last year the figure rose to 44,000.⁷ The majority of these asylum claimants arrive without documents or with fraudulent papers. They purchase the documents from professional “people smugglers” to board an aircraft, or they arrive at the Canadian border from the United States without documents and apply for refugee status.⁸

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Trafficking in humans has become big business. The UN estimates that four million people are smuggled across international borders annually. Trafficking is controlled by international criminal organizations whose illicit earnings from this traffic are estimated by the UN to be close to \$7 billion each year. Not surprisingly, Canada is fast becoming the country of choice for smugglers.

Not only does Canada permit anyone who arrives to make an asylum claim, but many of those eventually denied refugee status are never removed from the country. Only about 9,000 people are removed from Canada each year, and of these, approximately two-third are failed asylum seekers. The asylum/removal process is lengthy, time consuming, and bogged down by legal wrangling.

Asylum claimants refused by the IRB have the right to seek leave to appeal to the Federal Court. They can also, concurrently, apply to have their case reviewed by immigration authorities to determine if there might be undue risk should they be returned. If leave to appeal is denied and the risk review results in a negative decision, they have 30 days to voluntarily leave the country. During that period they are also entitled to have their case reviewed to see if there are any humanitarian reasons why they should not be removed. If no humanitarian reasons are found and the individual does not depart, a warrant for arrest is issued.

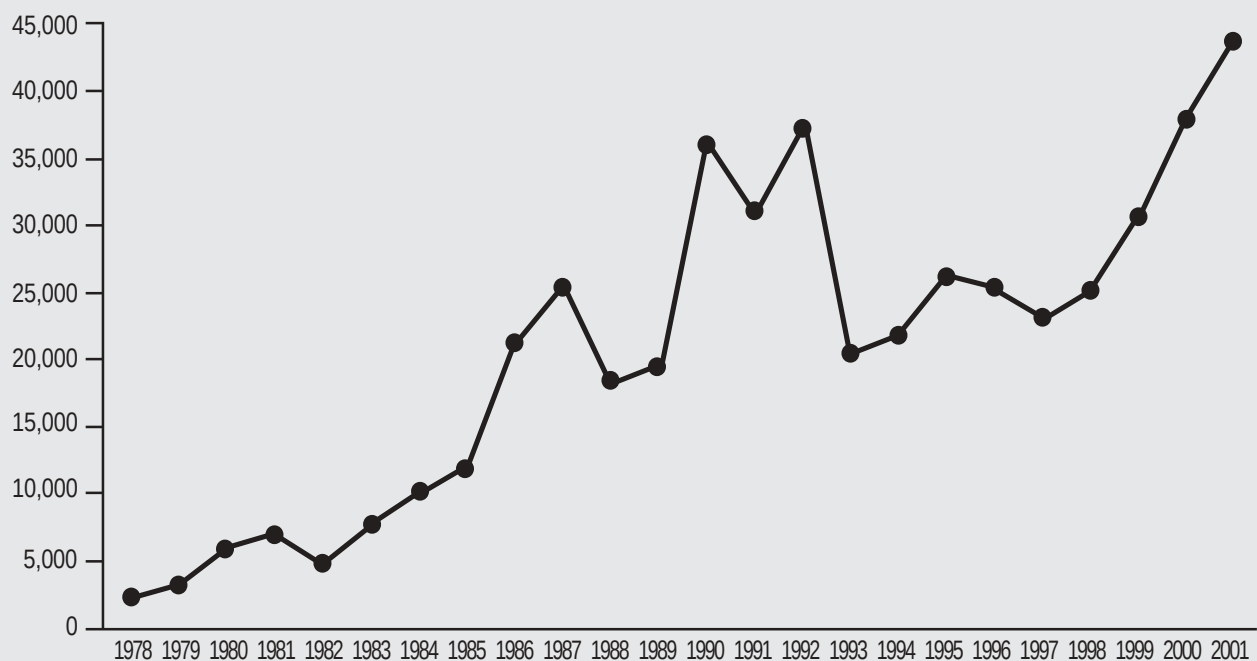
Due to chronic resource shortages, the immigration service is unable to effectively follow up on those for

whom a warrant has been issued. There are at present more than 25,000 arrest warrants outstanding. Moreover, over 20 percent of asylum seekers entering Canada do not even appear for their asylum hearing. Presumably they have gone “underground” or more likely have entered the United States illegally.⁹ It is evident, therefore, that the chances of remaining in Canada despite a negative ruling by the IRB are favourable. Naturally this is a major selling point for the smugglers.

The guarantee of due process and procedural fairness granted asylum seekers by the Charter of Rights and Freedom and the free legal assistance provided to them has subjected the asylum process to excessive legalization. As asylum jurisprudence has evolved, the decisions affecting asylum are increasingly being decided by lawyers and judges — most of who have never seen a real refugee or visited a refugee camp. In the last several years more than 50 percent of the total caseload of the Trial Division of the Federal Court has consisted of asylum cases. The litigious nature of the process has made the removal of failed asylum seekers exceedingly difficult. This is true even for terrorists and criminals.

In 1986, a convicted terrorist and murderer from the Popular Front for the Liberation of Palestine entered Canada illegally under a false identity. He was soon apprehended and ordered deported. He took the Immigration Service to court and the case remains there today — 16 years later. It is estimated that his court proceedings have

Figure 1. Asylum Claimants in Canada, 1978-2001



Source: Immigration and Refugee Board of Canada

cost the Canadian taxpayers more than \$3 million and the matter has still not been decided. This convicted terrorist is not detained but continues to operate a small confectionery store in Ontario.

This January, a Tamil asylum seeker who was discovered to be a fundraiser for the Liberation Tigers of Tamil Eelam, a terrorist organization, and who has been fighting deportation since the mid-1990s, was awarded another deportation hearing by the Supreme Court of Canada. This will mean, in effect, several more years of litigation before a decision can be made about his removal. By that time it is doubtful any Government would be willing to send him home.

An Iranian assassin employed by the Iranian Security Service entered Canada seeking asylum in 1991. He was apprehended by Canadian authorities and ordered deported. His lawyer has been fighting against his removal for more than 10 years. The Supreme Court of Canada recently ruled that he should be removed, but his lawyer managed to get the case heard by a Provincial Court and by the UN Human Rights Commission. The Provincial

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Court has now referred the case back to the Supreme Court and that Court has deferred his deportation until the Justices decide whether to hear his case again. If they decide to do so it will be the *third* time the Supreme Court of Canada — the highest court in the country — will have dealt with this case. Both the Tamil and the Iranian were found by the IRB to be refugees. It was only after this discovery that the authorities, when conducting background checks, discovered their past activities.¹⁰

Paradoxically, it is more difficult to remove asylum seekers who have committed serious crimes or terrorist acts in their native countries than it is to remove those without a criminal record or history of terrorist activity. If an individual might face the death penalty or suffer what is considered by Canadian standards unusual or extraordinary punishment, he or she stands a much better chance of being allowed to remain.

There are at least eight individuals known to be either convicted or alleged terrorists with al Qaeda connections now in Canada who are fighting extradition or removal. They come from Algeria, Egypt, and Syria. Six of them are failed asylum seekers. They arrived during the 1990s with forged documents and claimed to be seeking asylum from persecution. These men are still in Canada. It remains to be seen if they will ever be removed.

Post-9/11: The Immigration and Refugee Protection Act

In May 2001, a new Immigration and Refugee Protection Act was tabled in the Canadian Parliament. This was legislation that had been under study and preparation since 1997. It was based largely on an extensive review carried out by a small advisory group whose report was entitled “Not Just Numbers.”¹¹ One key recommendation of the report designed to reform the asylum system was the elimination of politically appointed members of the IRB. They would be replaced by professionally-trained permanent public servants. When the new legislation was introduced this key recommendation was noticeably absent.

In introducing the new Bill to the House of Commons Immigration Committee, Minister Elinor Caplan stressed the Bill was designed to ensure that “...we are able to say ‘yes’ more often to immigrants and refugees.” Caplan paid tribute to the Canadian Bar Association, the Council for Refugees, and the UNHCR for their valuable help and guidance in the formulation of the legislation.

It was made abundantly clear that the new Bill was intended to take an even more expansive and generous approach to asylum seekers than had the 1989 legislation. This could be inferred by the very title of the new Act, which included for the first time the words “Refugee Protection” as well as “Immigration.” It would appear that asylum seekers were to be afforded equal billing with lawful immigrants. Increasingly large numbers of people being trafficked into the country was not seen as a problem.

The Act makes it easier for those seeking asylum to qualify as refugees. The UN Convention definition has been expanded to include persons who might suffer cruel or unusual punishment or whose lives might be at risk if they were removed. In addition, the UN Convention against torture has been formally incorporated into the Act so that anyone claiming fear of torture if removed will be afforded protection. As a further safeguard, another level of review has been introduced following rejection at the initial hearing. Now, instead of only being able to seek leave to appeal to the Federal Court, all rejected cases will have an automatic appeal to a new division of the IRB. If refused at this level there is still the opportunity to seek leave to appeal to the Federal Court and have a humanitarian review conducted by the Immigration Service. The new Bill also formalizes the pre-removal risk assessment so that those refused by the IRB are entitled to have this additional review carried out. Moreover, there is now a provision allowing oral hearings at the pre-removal risk review.

As before, the new legislation retains the provision for implementation of the “safe third country” concept. However, there is no suggestion that this provision will be enacted. If it ever should be, an added safeguard

has been included specifying that no country will be considered “safe” that has not signed the UN Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.

The legislation passed through the House of Commons with little concern or discussion about its asylum provisions. None of the opposition parties objected to the more generous approach to asylum seekers. There were no serious questions raised about the additional barriers to the removal of people found not to be genuine refugees. There was no concern that this legislation seemed to be out of step with all of the other asylum countries of Western Europe, the United States, and Australia.

The legislation had passed the House of Commons and was being examined by the Immigration Committee of the Senate when the events of September 11 took place. Suddenly it was apparent the new legislation was deeply flawed. New witnesses appeared before the Senate Committee. They asked that the Bill be sent back to the House of Commons to take into account the reality that many of the people entering Canada in the guise of asylum seekers posed a serious threat to the security of

Canada and the United States.¹² Recommendations were offered suggesting the legislation adopt many of the measures used by the European countries and the United States to better control the inflow. The Senate was not listening.

The Government refused even to consider the possibility of amending the Bill, and the Senate passed it in November 2001. The new legislation is scheduled to come into effect in the June of this year. It will introduce an asylum system that many consider irresponsible and dangerous in light of the 9/11 attacks. It is a system that reflects an attitude of complacency and cynicism on the part of a Government that appears less concerned about the security of its citizens than in satisfying the demands of special interests.

There is little likelihood the current Canadian Government will change its mind about its approach to asylum seekers. Change would only be possible as a result of a serious terrorist incident in Canada or pressure from the United States Government. Unfortunately, while the system remains in effect it undermines all other security measures taken by both countries to construct an effective North American defense against terrorist threats.

End Notes

¹ In the early 1990s, the approval rate of Canada's Immigration and Refugee Board was over 70 percent. The current rate is 55-60 percent. The Board approved 1,600 Pakistani and 2,000 Sri Lankan cases in 2000. That same year, all of Europe, the United States, and Australia approved a total of 500 from those two countries. In the summer of 2001, the Toronto section of the Board was approving Mexican cases at a rate of 75 percent.

² The UN High Commissioner for Refugees (UNHCR) replaced the International Refugee Organization (IRO) established in June 1947 to assist refugees. The IRO closed down in February 1951.

³ From 1947 to 1952 Canada accepted 186,150 refugees from Europe. In subsequent years, large-scale movements of refugees assisted in the resolution of refugee problems affecting specific countries: Hungary in 1956 (37,000), Czechoslovakia in 1968 (12,000), Uganda in 1972 (7,000), Chile in 1973 (7,000), Indochina from 1975 to 1984 (100,000), and Lebanon from 1976 to 1979 (11,000). In 1986, in recognition of this contribution, the UNHCR awarded Canada the Nansen medal — the first time any country had received such an honour.

⁴ Canada resettles each year 10,000 refugees selected from abroad, about 2,500 of whom are sponsored by private groups.

⁵ Ironically, while Canada boasts of its generous asylum system, it does everything possible to prevent people from using it. The imposition of visitor visas is the instrument of choice, but Canada also has a network of overseas officers conducting airport checks and training airport staff to detect potential asylum seekers.

⁶ In 1985, the Supreme Court of Canada ruled that asylum claimants had the right to appear personally before the decision-maker, otherwise known as the Singh Decision. The Court also ruled that the Charter of Rights and Freedoms protects every individual in Canada, not only citizens or legal residents. The Singh Decision is considered by many to preclude fundamental reform of the asylum system, short of amending the Charter or introducing a “notwithstanding clause”.

⁷ The yearly costs for processing and caring for 40,000 asylum seekers is estimated to exceed \$1 billion per year. Compare this with the \$20-25 million Canada donates annually to the UNHCR, whose caseload exceeds 22 million refugees per year.

⁸ Many Chinese citizens pay up to \$50,000 to be smuggled into Canada. Most of whom are destined for the United States.

⁹ More than 30 percent of Chinese asylum seekers do not appear for their hearings. The figure for Mexicans is close to 75 percent.

¹⁰ Prior to 9/11, criminal and security checks were not initiated on asylum seekers until after a positive decision by the IRB. Now the criminal and security checks are started after the asylum seeker enters the country, but such checks may take up to a year or more to complete, and in the meantime, the individual is in Canada, able to work, and has unlimited freedom of movement.

¹¹ <http://www.cic.gc.ca/english/about/policy/1rag/emain.html>

¹² From September 11, 2001 to January 2002, more than 2,500 asylum seekers have entered Canada from Afghanistan, Pakistan, Somalia, Iraq, Iran, Albania, and Algeria. Visitors from Saudi Arabia still do not require visas to enter Canada.



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Canada's asylum laws would not normally be of concern to the United States, but after the terrorist attacks of September 11 this has changed. Although none of the terrorists came from Canada, the existence of terrorist cells has been well documented. The head of the Canadian Security Intelligence Service (CSIS) reported to the Canadian Parliament in June 1998 that there were more than fifty terrorist organizations operating in the country.

Two months *after* the terrorist attacks, the Parliament passed new legislation that makes it easier for asylum seekers to apply for refugee status and makes it more difficult for those found not to be genuine refugees to be sent home. Consequently, the security of both countries remains vulnerable to a Canadian asylum system that seems designed to openly welcome potential terrorists. This *Backgrounder* examines how Canada's asylum system has evolved since the end of the Second World War and what major influences have given rise to the system that currently exists.